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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 394

BERNARD F. KENNY,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ISADORE GLAUBERMAN,
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Attorney for Petitioner,
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WARREN BRODY,
On the Petition.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

BERNARD F. KENNY,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on July 10, 1956.

Opinion Below

The opinion of the Court of Appeals, printed in the Appendix hereto, *infra*, page 9, is as yet unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on July 10, 1956 and is printed in the Appendix hereto, page 16, *infra*. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1). This petition is filed within an extension of time granted August 4, 1956 by Mr. Justice HARLAN.

Question Presented

Whether the Government is estopped from trying the petitioner for concealing, in violation of 18 U. S. C., Section 1001, an interest as a partner in a firm having contracts with a governmental agency by whom he was employed, because a jury had already determined by acquitting the petitioner under an earlier indictment for making allegedly false statements in violation of the same statute, either that he was not at the time a partner in the firm or that he lacked criminal intent to conceal his partnership interest.

Statute Involved

The statutory provision involved is the Act of June 25, 1948, Chapter 645, 62 Stat. 749, 18 U. S. C., Section 1001, which reads as follows:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Statement

On June 23, 1954 the Grand Jury in and for the District of New Jersey, sitting at Newark, returned two indictments against the petitioner, Indictment No. 274-54 (hereinafter referred to as the first indictment) and Indictment No. 273-54 (hereinafter referred to as the second indict-

ment) (R. 344-350, R. 2-4).* Each indictment charged a violation of 18 U. S. C., Section 1001 quoted above.

From March 15, 1950 until 1954 petitioner was the executive director of the Jersey City Redevelopment Agency, a state agency which receives funds from the Housing and Homes Financing Agency, a federal agency, for the purpose of carrying on a program of local slum clearance and urban redevelopment (R. 345, R. 3). In connection with this program and while petitioner was executive director the state agency entered into two contracts with the architectural firm of Mascolo and Masumian. As the contractor's work progressed, it submitted to the state agency vouchers for payment, four of which are the subject of the first indictment.

These four vouchers dated respectively October 5, 1951, December 12, 1951, December 12, 1951, January 15, 1952, each contain an affidavit stating that no employee of the state agency has any interest in the contractor's claim. Two of the affidavits were signed by Mascolo and the other two by Masumian. None was signed by the petitioner.

The first indictment charges that the petitioner, Mascolo, Masumian and Comparetto (an admitted partner), alleged partners in the firm of Mascolo and Masumian, made a false statement in the aforesaid affidavits because they all knew that the petitioner had an interest in the contractor's claim.

The second indictment was returned against the petitioner alone. It charges that during the period from October 5, 1951 to January 15, 1952, the identical period spanned by the four vouchers of the first indictment, the petitioner concealed his interest in the Mascolo and Masumian con-

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* References, unless otherwise noted, are to the printed Appendix filed with the Court of Appeals and certified on this petition.

tracts referred to in the first indictment by maintaining the position of an undisclosed partner in that firm.

The two indictments were originally tried together before a single jury. The government attempted to prove its case under both indictments by trying to establish that the petitioner was a partner in the firm during the period set out in the indictments. As his defense, petitioner admitted knowledge of the statements which were submitted to the said agency (Transcript of 1st Trial, pp. 150, 160, and 200) but denied that he was a partner at the time (Transcript of 1st trial, pp. 135-136). After the government's case, the Court acquitted Comparetto. After all the evidence was in, the jury acquitted the petitioner, Mascolo, and Masumian on the first indictment, but could not agree on a verdict as to the second indictment.

Before the retrial of the second indictment the petitioner moved to dismiss that indictment on the grounds of *res judicata* (collateral estopple) and double jeopardy (R. 5). The petitioner contended that his conviction under the first indictment precluded his trial under the second. The motion was denied and the trial proceeded to a verdict of guilty. The Court imposed a sentence of two years imprisonment and a fine of $5,000.

Upon appeal to the Court of Appeals for the Third Circuit, the petitioner renewed his argument that the former acquittal precluded his trial under the second indictment. The judgment, however, was affirmed.

Reasons for Granting the Writ

The Court of Appeals for the Third Circuit has rendered a decision in conflict not only with prior decisions of Courts of Appeals including its own, but with prior decisions of this Court, the latest being *Sealfon* v. *United States*, 332 U. S. 575 (1947).

Res judicata or collateral estopple is a defense in a second prosecution and operates to conclude those matters in issue which the verdict determined though the offense be different. *Sealfon* v. *United States,* 332 U. S. 575, 578 (1947); *Cosgrove* v. *United States,* 224 F. 2d 146 (C. A. 9, 1954, rehearing 1955); *United States* v. *Simon,* 225 F. 2d 260 (C. A. 3, 1955); *United States* v. *De Angelo;* 138 F. 2d 446, (C. C. A. 3, 1943); *United States* v. *Carlisi,* 32 F. Supp. 479 (D.C.E.D.N.Y. 1940). *Cf. Frank* v. *Mangum,* 237 U. S. 309, 334 (1914); *Southern Pacific R.R. Co.* v. *United States,* 168 U. S. 1 (1897); *Tritico* v. *United States,* 4 F. 2d 644 (C.C.A. 5, 1925). See *Developments in the Law—Res Judicata,* 65 Har. L. Rev. 818, 874 (1952); McLaren, *Doctrine of Res Judicata as Applied to the Trial of Criminal Cases,* 10 Wash. L. Rev. 198 (1935); Kirchheimer, *The Act, The Offense, and Double Jeopardy,* 58 Yale L.J. 513 (1939); Anderson, *Res Judicata with Respect to Criminal Judgments,* 102 N. Y. L.J. 2194 (1939); Note 27 Texas L. Rev. 231 (1948); Annotation, *Doctrine of Res Judicata in Criminal Cases,* 174 A.L.R. 991.

As this Court stated in the *Sealfon* case, "the only question in this case is whether the jury's verdict in the [trial of the first indictment] * * * was a determination favorable to the petitioner of the facts essential to conviction of the [petitioner under the second indictment.] * * * This depends upon the facts adduced at each trial and the instructions under which the jury arrived at its verdict at the first trial." *Sealfon* v. *United States,* 332 U. S. 575, 578 (1947).

The gist of the government's case against the petitioner in the first indictment as stated in that indictment was that he knew at the time that the statements submitted to the agency were false. As the Court of Appeals characterized it, "the prosecution had to establish that the affidavits were executed with a requisite criminal intent by

the signer and guilty knowledge and acquiescence by [the petitioner] * * * " (p. 12, *infra*)

In order for the statements to have been false the jury had to find at the first trial that the petitioner was in fact a partner during the time alleged. That this was the main issue is clearly expressed by the trial judge in his charge to the jury at the conclusion of the first trial:

> "The Government claims that this voucher was false, in that they all knew that Kenny was such an Executive Director and that he had an interest in the claim because the Government charges that he was a partner during that period in M. & M. Now, I think, of course, it is for you to decide, but I think that you will agree when you get right down to it that about the most important thing for you to decide when you come down to your jury room is whether or not Kenny was a partner in this firm of Mascolo & Masumian during the indictment period, namely, October, 1951 to January 15, 1952, because if he wasn't that is all there is to it. Nobody is guilty * * *" (R. 357)

Recalling that the petitioner did not sign any of the allegedly false statements, the following issues were raised by the first indictment:

(1) Whether the petitioner then knew that the statements had been made.

(2) Whether the petitioner was a partner, i.e., whether the statements were in fact false.

(3) Whether the petitioner had the requisite criminal intent to conceal the alleged truth of his alleged partnership interest.

The first "issue" was never, however, presented to the jury since the petitioner admitted that he knew of the

statements and even testified that he went over the vouchers and presented them to the board of the state agency, recommending their approval (Transcript of 1st Trial, pp. 150, 160 and 200).

Thus, when the jury acquitted the petitioner on the first indictment they must have determined that (1) he was not a partner or (2) he lacked the requisite criminal intent to conceal the truth of his alleged partnership interest.

These two issues are precisely the only two issues raised by the second indictment charging concealment of the partnership interest. Thus the verdict for the petitioner under the first indictment on either of the two issues then before the jury, necessarily determined in the petitioner's favor an issue essential to his conviction under the second indictment.

In addition to the *res judicata* bar to the second indictment, trying the petitioner on identical issues which were present in the first indictment is contrary to considerations for the protection of an accused which are embodied in the constitutional guarantee against double jeopardy. *United States Constitution, Amendment V; Carter* v. *McCaughry,* 183 U. S. 365, 394, (1901); *United States* v. *"The Haytian Republic",* 154 U. S. 118, 125 (1893).

The Court below held that *res judicata* did not apply because the prior verdict might have been based on a determination that the petitioner lacked "the requisite criminal intention of misrepresenting [i.e., concealing] * * * [his] relationship to the firm." (p. 13, *infra.*) This holding, we submit was erroneous because that identical intention had to be again established under the second indictment charging concealment of the alleged partnership interest.

Therefore whether it is considered that the first jury resolved the intent-to-conceal-his partnership-interest issue

or the partnership issue itself in favor of the petitioner, in either event the government should have been estopped from trying the petitioner under the second indictment where both issues were necessarily again submitted to a jury.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ISADORE GLAUBERMAN,
Counsel for Petitioner.

MARTIN D. MORONEY,
Attorney for Petitioner.

WARREN BRODY,
On the Petition.

APPENDIX

Opinion of United States Court of Appeals for the Third Circuit

(Filed—July 10, 1956)

Argued April 16, 1956

Before GOODRICH, KALODNER and HASTIE, *Circuit Judges.*

By HASTIE, *Circuit Judge.*

Appellant, Bernard F. Kenny, the executive officer of a New Jersey municipal housing and redevelopment agency has been convicted of violating Section 1001 of Title 18 of the United States Code in that he willfully and by artifice concealed the material fact of his private interest in certain government contracts, this being done in a matter within the jurisdiction of the Housing and Home Finance Agency. Section 1001, under which both this and a relevant companion indictment against Kenny were drawn, provides as follows:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly, and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The present indictment, No. 273-54, named Kenny as sole defendant and charged that in a matter within the jur-

isdiction of the Housing and Home Finance Agency, defendant willfully and unlawfully concealed the fact that he, while serving as executive director of the Jersey City Redevelopment Authority, had a private interest in two certain contracts, dated July 2, 1951, between the Authority and the architectural firm of Mascolo and Masumian, through a secret relationship of undisclosed partner in the said firm.

A companion indictment, No. 274-54, charged that Kenny, Mascolo, Masumian and Comparetto, as partners in the firm of Mascolo and Masumian, did, in a matter within the jurisdiction of the Housing and Home Finance Agency, knowingly, willfully and unlawfully on four separate occasions between October 5, 1951 and January 15, 1952, make false material statements in affidavits supporting certain vouchers submitted by the firm as claims for services rendered under the above mentioned contracts. In each affidavit one of the partners stated on behalf of the firm that no employee of the local agency had any interest, direct or indirect, in the claims presented, whereas it is alleged the defendants well knew the statements to be false in that they knew Bernard F. Kenny was an employee of the local agency and had an interest in the claims.

The two indictments were tried together. The jury acquitted all defendants of the charge in No. 274-54, but could not reach an agreement on No. 273-54. A second trial on the latter indictment resulted in a jury verdict of guilty. Judgment was entered thereon and this appeal followed.

Appellant first urges that the alleged wrongdoing did not occur in "a matter within the jurisdiction of an agency of the United States," within the meaning of Section 1001 of Title 18. He points out that the Housing and Home

Finance Agency merely loaned money to the municipal agency and that, thereafter, it was his interest in a municipal rather than a federal contract which he is said to have concealed. But the Housing and Home Finance Agency was intimately connected with and substantively interested in the contracting by the local agency. On behalf of the United States it had advanced the entire sum required to finance the project planning of which these contracts were a part. And after this planning should be completed the federal government would be committed to the making of grants to cover two-thirds of the entire cost of the project. Moreover, in advancing funds for planning Housing and Home Finance Agency required that all contracts proposed by the local agency for services and materials be cleared by it.

More directly bearing on the wrongdoing here charged, the loan contract contained the following provision:

> "... nor shall any such member or other officer, agent, servant or employee of the Local Private Agency have any private interest, direct or indirect in any contract for property, materials, supplies, equipment or services to be acquired by the Local Public Agency in the undertaking of the Surveying and Planning work; ...."

This contractual requirement was a legitimate method of vindicating the interest of the federal agency in the integrity of transactions it was financing. Any failure to respect this obligation was certainly a matter within the jurisdiction of the federal agency. Thus, Kenny acted in a context covered by Section 1001 of Title 18. *Cf. Nye and Nissen* v. *United States,* 9 Cir. 1948, 168 F.2d 846; affirmed 336 U. S. 613; *United States* v. *Ganz,* D.C. Mass. 1942, 48 F. Supp. 323.

Appellant's next contention is that his acquittal on the trial of indictment No. 274-54 is a complete bar to further proceedings on indictment No. 273-54. The parties are not in dispute as to the controlling principle of res judicata in criminal cases. Where the state charges an accused with two related offenses, an acquittal of one precludes subsequent prosecution on the other, if that acquittal was the result of decision in favor of the defendant on an issue which would be essential to the case against him on the second charge. *Sealfon* v. *United States,* 1948, 332 U. S. 575; *cf. United States* v. *Simon,* 3 Cir. 1955, 225 F.2d 260.

It was essential to conviction in the present case that the government prove that Kenny was a partner financially interested in the contracts of Mascolo and Masumian with the municipal agency. That is conceded. However, to make his res judicata point, Kenny must also show that a contrary finding on that same issue of fact was made by the jury which acquitted him of the first charge. This we think he has failed to establish.

The evidence on the first trial of the two indictments showed that a partner other than Kenny signed the vouchers which contained a false representation and were the subject matter of indictment No. 274-54. Therefore, beyond proof of Kenny's partnership interest, the prosecution had to establish that the affidavits were executed with requisite criminal intent by the signer and guilty knowledge and acquiescence by his business associates. Indeed, the court cautioned and instructed the jury to "bear in mind that . . . the false statements must have been a knowing and willful false statement instead of a mere negligent one". Thus instructed, the jury may have believed that the person who signed these vouchers on

behalf of the firm acted heedlessly and that neither he nor his associates in submitting these vouchers had the requisite intention of misrepresenting Kenny's relation to the firm. This seems to be the plausible and probable explanation of the jury's action in acquitting all defendants under indictment No. 274-54, yet failing to reach an agreement on indictment No. 273-54. We must recognize that the jury may quite consistently have concluded that criminal intent had not been proved in one case, while disagreeing on the issue of partnership status in the other case. Therefore, we cannot accept appellant's supposition that the jurors acquitted him of making a false affidavit on the theory that he was not a partner.

We come now to appellant's point that the evidence was insufficient to warrant a conviction. As to this, we state merely that our study of the record has led us to the contrary conclusion. However, one legal point deserves mention here. At the conclusion of the government's case the defendant moved for dismissal on the ground that the showing made by the prosecution was insufficient to sustain a conviction. A similar motion was made at the conclusion of the entire case. Both motions were denied. On this appeal it is argued that we should consider only the sufficiency of the government's case in chief, that we should not consider any evidence helpful to the prosecution which the defense may have adduced. Such is said to be the New Jersey rule. *State* v. *Fox*, 1951, 12 N. J. Super. 132, 79 A.2d 76. However, the federal rule is to the contrary. By introducing evidence in his own behalf, defendant takes the risk of completing a case against himself. The adequacy of the government's case in chief standing alone is no longer in issue. *Gaunt* v. *United States*, 1 Cir. 1950, 184 F.2d 285, certiorari denied

340 U. S. 917; *United States* v. *Thayer*, 7 Cir. 1954, 209 F.2d 534.

Next, appellant complains that after he took the witness stand in his own defense the court permitted the prosecutor to cross-examine him with reference to his dealings with the firm of Mascolo and Masumian in 1952, after the period covered by the indictment. Admittedly, the indictment was based on transactions in 1951. On direct examination the defendant had testified that he resigned from the partnership in May, 1950. On cross-examination he was questioned, over objection, about certain weekly cash payments made to him by the several members of the firm in 1952. This inquiry about occurrences subsequent to the period covered by the indictment is now assigned as prejudicial error and abuse of discretion as to the scope of cross-examination. But the testimony of the witness on direct examination had been to the effect that he had no interest in business conducted by the firm after May, 1950. Certainly it is a proper method of testing the accuracy of that assertion and the credibility of the witness to ask him on cross-examination about money received from members of the firm some two years later. He did offer an exculpatory explanation that these payments related to something other than a sharing of firm profits. But that did not affect the propriety of asking about conduct which, unexplained, seemed inconsistent with the testimony of the witness on direct examination.

Finally, several instructions which were part of the court's charge to the jury are also challenged on this appeal. We have examined each such instruction and find no basis for reversal. Only two particular observations need be added. The charge as to the proper evaluation of the testimony of a witness who has testified falsely in one

particular was consistent with the view expressed by this court in *United States* v. *Rutkin,* 1951, 189 F.2d 431, affirmed 343 U. S. 130. The instruction given on the evaluation of evidence of good reputation followed our ruling in *United States* v. *Claypoole,* 1955, 227 F.2d 752.

On the whole record we have concluded that this conviction was justified by the evidence as presented in a fair trial conducted without reversible error.

The judgment will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment of Affirmance of United States Court of Appeals

(Filed—July 10, 1956)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,767

UNITED STATES OF AMERICA,

vs.

BERNARD F. KENNY,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present:

GOODRICH, KALODNER AND HASTIE,
Circuit Judges.

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by Counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:
IDA O. CRESKOFF
Clerk

July 10, 1956

[illegible]

United States Court of Appeals

[illegible]

No. 13,767.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD T. KENNY,

Appellee.

Appeal from a Judgment of the United States District Court for the District of New Jersey, Criminal Docket No. 276-54.

Appendix for Appellee

RAYMOND Del. TOMA, JR.,
United States Attorney,
GEORGE J. ROSS,
Assistant United States Attorney,
On the Brief.

PETER P. GARVEY,
Assistant United States Attorney,
Of Counsel.

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G-3, Original Application for Final Advance, St. John's Site 19b

G-6, Letter dated May 29, 1951 from Bernard F. Kenny to the Housing and Home Finance Agency 38b

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G-14, Letter dated April 12, 1951 from the Housing and Home Finance Agency to Bernard F. Kenny 44b

Appendix

JUDGMENT AND COMMITMENT.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA,
v.
BERNARD F. KENNY.

No. CR. 273-54.

On this 13th day of October, 1955, came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of Concealment of a Material Fact, as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

representative for imprisonment for a period of two years and pay a fine of Five Thousand Dollars ($5,000.00).

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

GERALD McLAUGHLIN,
United States Circuit Judge.
Specially designated.

A True Copy, Certified this thirteenth day of October 1955.

(Signed) WILLIAM H. TALLYN,
Clerk.

(By) L. A. McCURTY,
Deputy Clerk.

NOTICE OF APPEAL.

IN THE

DISTRICT COURT OF UNITED STATES.

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA,	Notice of Appeal.
v.	Criminal No. 273-54.
	Title 18, U. S. C.
BERNARD F. KENNY.	Section 1001.

Name and Address of appellant—Bernard F. Kenny, 131 Kensington Avenue, Jersey City, New Jersey.

Name and Address of appellant's attorney—MARTIN D. MORONEY, Esq., 744 Broad Street, Newark, New Jersey.

Offense—Appellant was tried on an Indictment containing one Count which charged him with a violation of Title 18, U. S. C., Section 1001, the allegations being that the appellant did conceal and cover up by trick, scheme and device a certain material fact that he, in his capacity as Executive Director of the Jersey City Redevelopment Agency had a private interest in two contracts for services awarded to the architectural firm of Mascolo and Masumian of Jersey City, New Jersey, and that he having concealed his interest in the contracts by main-

taining a position of an undisclosed partner in the said firm of Mascolo and Masumian. The appellant was found guilty.

Judgment was entered on the 13th day of October 1955.

Description of judgment or sentence—The appellant was sentenced as follows: Two years imprisonment and a fine of $5,000.00.

I, BERNARD F. KENNY, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Third Circuit from the above-stated judgment.

BERNARD F. KENNY,
Appellant.

Dated: October 13, 1955.

EXHIBIT G-1.

JERSEY CITY REDEVELOPMENT AGENCY
#1 Newark Ave.

Commissioners

—

Thomas Davidson
Chairman
Arthur M. Hoffman
Vice-Chairman
Charles Davis
William Hirshberg
Marcus E. Carpenter
Richard T. McCallum

Harold Krieger
Counsel
Bernard F. Kenny
Executive Director
Max H. Roller
Technical Advisor

June 8, 1950

Exhibit G-1

Mr. N. S. Keith
Director
Slum Clearance and Urban Redevelopment
Housing and Home Finance Agency
Washington 25, D. C.

Dear Mr. Keith:

We understand that some question has arisen regarding the wages paid technical employes of the Jersey City Redevelopment Agency.

This is to advise you that the employes of this Agency will consist of the Executive Director, the Assistant Executive Director, and other clerical and administrative employes.

The only employes that could be considered technical employes in accordance with Section 109 of the Housing Act of 1949 are investigators who are currently employed by this Agency at a salary of $300.00 a month. These investigators inspect the physical condition of structures and dwelling units in the sections we propose to redevelop and the type of occupancy of these dwelling units, and such other activities of this nature as they may be directed by the Executive Director.

If the Agency decides to engage any other technical employes for whom a determination of prevailing wages will be required in accordance with the provisions of Section 109 of the Act, it will request such a determination from your agency.

Since the wages now being paid these investigators are similar to the wages paid for other persons engaged in this type of work in this locality, it is requested that the Administrator give us a finding that they are prevailing.

Very truly yours,

BERNARD F. KENNY,
Bernard F. Kenny
Executive Director

bfk:d

Exhibit G-2

EXHIBIT G-2.

JERSEY CITY REDEVELOPMENT AGENCY
One Newark Avenue - Jersey City 2, N. J.
DElaware 3-3470

Commissioners

—

Thomas B. Davidson
Chairman
William Hirshberg
Vice-Chairman
Charles Davis
Marcus E. Carpenter
Richard T. McCallum
Frank Coyle

Administrative

—

Bernard F. Kenny
Executive Director
Max H. Roller
Technical Advisor
Bernard German
Counsel

December 14, 1950

Mr. Nathaniel S. Keith
Office of the Administrator
Housing & Home Finance Agency
1625 K St.
Washington 25, D. C.

Dear Mr. Keith:

You will find enclosed applications for a final advance for two proposed projects known as the GREGORY SITE NJ 2-1(b) and the ST. JOHNS SITE NJ 2-2(b).

In support of the application and the attached data thereto, you will find the following supporting documents for each project:

-A-

1.—Arrangements for local grants-in-aid
2.—Form H-604

Exhibit G-2

3.—Certified copies of resolution of Applicant
4.—Certified copies of resolution of Governing Body.

-B-

Survey

-C-

Appraisal Report

-D-

Availability of utilities

-E-

Maps Filed:
1.—Present zoning.
2.—Existing Land Use.
3.—½ mile radius map.
4.—½ mile radius map showing proposed zoning and land use.
5.—Redevelopment Plan.

Trusting same will meet with your approval, I am

Very truly yours,

BERNARD F. KENNY
Bernard F. Kenny
Executive Director

HOUSING AND HOME FINANCE AGENCY
Office of the Administrator
Slum Clearance and Urban Redevelopment Program

APPLICATION FOR FINAL ADVANCE

To be filled in by HHFA:
Application No. UR NJ 2-1(b)
Locality Jersey City
Gregory Site
Date Filed 12-18-50

Exhibit G-2

IDENTIFICATION OF APPLICANT

Applicant Jersey City Redevelopment Agency
(Legal corporate name of Applicant)
Address Jersey City Hudson New Jersey
(City or town) (County) (State)
Applicant's official authorized to supply information relating to this Application:
Bernard F. Kenny Secretary and Executive Director
(Name) (Title)
1 Newark Avenue Delaware 3-3470
(Address) (Telephone number)

IDENTIFICATION OF PROJECT

Identify the proposed redevelopment project in connection with which the planning and other activities will be performed under this Final Advance:
Name Gregory Site
Location Bounded on North by Railroad Ave., South by York St., East by Warren St., West by Henderson St.
Area in Acres 14

ADVANCE REQUESTED

Enter below the estimated costs for plans and other activities to be financed from the Final Advance:

	Estimated Cost 6 months
Work performed directly by Applicant and administrative overhead	

Exhibit G-2

	Director $2000	
	Adm. Asst. $1225	
Salaries—Administrative		$ 3,125
Legal		625
Technical		410
Clerical		700
Accountant		150
		$5,010*
Expenses—Travel		375
Telephone and telegraph		180
Rent and utilities		600
Office supplies, etc.		300
Maps & Blueprints		250
Contingencies		400
Total salaries and expenses		$7,115*
Contractual services rendered by other government agencies		
Contractual services rendered by private firms		20,100
Total amount of Final Advance requested		$27,215

*Artificial apportionment of costs—one-half for each proposed project—cost for one project would be approximately double above totals.

ESTIMATES

Enter below the Applicant's preliminary estimates of net and gross project cost:

(a) Payments for land and cash value of donated land $1,222,000

Exhibit G-2

(b) Cost of demolition and clearance of structures	125,000
(c) Cost of installation of site improvements	58,000
(d) Cost of administration, surveys, plans, technical services, overhead, relocation of families, carrying charges, etc.	42,000
(e) Cost of any local grants-in-aid not included above and furnished in forms other than cash	400,000
(f) Total—Gross project cost	$1,847,000
(g) (Deduct) Re-use value of project land (See Appraiser's report)	100,000
(h) Balance—Net project cost	$1,747,000

CERTIFICATE

The Applicant hereinbefore designated makes application to the United States of America for a Final Advance under the provisions of Title I of the Housing Act of 1949 to aid in defraying the costs of plans and other activities in preparation of slum clearance and urban redevelopment projects which may be assisted under said Title I.

The Applicant represents that the data contained in and in support of this Application are true, correct and complete; that the filing of this Application has been duly authorized and approved by the appropriate governing body of the Applicant; that the undersigned officer has been duly authorized by formal action of said governing body to file this Application for and in behalf of said Applicant, to provide to the United States such additional information and documents as may be required, and otherwise to act as the

authorized representative of the Applicant in connection with this Application.

IN WITNESS WHEREOF, the Applicant has caused this Application to be duly executed in its name by its undersigned officer and its official seal (if one has been adopted) to be hereunto affixed and attested by its proper official this 11th day of December, 1950, in Jersey City, County of Hudson, State of New Jersey.

Jersey City Redevelopment Agency
(Legal corporate name of Applicant)
Bernard F. Kenny
BERNARD F. KENNY
By Secretary and Executive Director
(Signature of authorized officer)
.....
(Title of authorized officer)

ATTEST:
(Here affix seal)
W. HIRSHBERG
(Signature of attesting officer)
William Hirshberg
Vice-Chairman
(Title of attesting officer)

SPECIAL INSTRUCTIONS: Attach a list of all documents, reports or other exhibits submitted with this Application. Mark each submission with the name of the Applicant.

Exhibit G-2

JERSEY CITY REDEVELOPMENT AGENCY

LIST OF DOCUMENTS & REPORTS SUBMITTED WITH APPLICATION FOR FINAL ADVANCE FOR GREGORY SITE

APPLICATION FOR FINAL ADVANCE

I—Justification of proposed expenditures.
II—General Planning.
III—Proposed Project area and new uses.
IV—Financing.
V—Relocation of Displaced Persons.
VI—Supporting Documents:—

-A-

1.—Arrangements for local grants-in-aid.
2.—Form H-604.
3.—Certified copies of resolution of Applicant.
4.—Certified copies of resolution of Governing Body.

-B-

Survey of Gregory Site

-C-

Appraisal Report

-D-

Availability of utilities.

-E-

Maps Filed:
1.—Present zoning.
2.—Existing Land Use.
3.—½ mile radius map.
4.—½ mile radius map showing proposed zoning and land use.
5.—Redevelopment Plan.

Exhibit G-2

JERSEY CITY REDEVELOPMENT AGENCY

GREGORY SITE

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JERSEY CITY REDEVELOPMENT AGENCY

GREGORY SITE

I. JUSTIFICATION OF PROPOSED EXPENDITURES

The Jersey City Redevelopment Agency plans to proceed with the two following redevelopment projects, known as Gregory Site and St. John's Site, and separate applications are filed herewith. The estimated costs as set forth on form #H-602 is artificially apportioned one-half for each project. The administrative costs and expenses for only one project would be approximately the total of such costs as itemized on both applications. This Agency plans to proceed with the clearance and redevelopment of both sites simultaneously.

The Final Advance will be used to finance the following detailed studies and plans with respect to the Gregory site which are necessary to support an application for a Loan

and Capital Grant, including the assembly of information required for that application:—

(a) *Procurement of tract ownership data for land acquisition purposes:* Inasmuch as this data is incorporated in the report of the appraiser which is filed herewith, no request is made in this application for final advance funds for this purpose.

(b) *Appraisals of property to establish valuations for land acquisition purposes:* Inasmuch as this data is incorporated in the report of the appraiser which is filed herewith, no request is being made in this application for final advance funds for this purpose. The appraiser is prepared to testify in court in the event such action is necessary.

(c) Estimates of cost of demolition or removal of structures: This estimate will be obtained by the Agency without charge and therefore no request is being made in this application for funds for this purpose.

(d) Topographic and other engineering surveys: A topographic and utility survey will be prepared at an estimated cost of $2500. It will be prepared by private contract. This is the lowest fee obtained from a responsible firm qualified to prepare same, after several of such firms were contacted. The topographic survey will include the elevation of the land showing the contour lines of the proposed site in order that we may plan its reuse. The utility survey will include existing utilities such as water, sewerage, gas and electric, etc.

A subsoil survey (test borings) is necessary in order to ascertain the approximate bearing capacity of the soil. Potential redevelopers are aware that piling will be required in this area because of the low

bearing capacity of the soil. Test borings are therefore essential for the following reasons:—

(1) To determine the size and type of structures in the redevelopment plan and proper preparation of the redevelopment plan.

(2) To estimate the cost of such piling which will be undertaken by the redeveloper so that the resale value or use value of the land may be properly ascertained and to induce redevelopers to participate in the program.

This subsurface survey will be prepared by private contract at an estimated cost of $1600. This is the lowest fee obtained from a responsible qualified firm after several of such firms were contacted.

(e) *Preparation of a redevelopment plan:* It will be prepared by private contract at an estimated cost of $7500. This is the lowest fee obtained from responsible firms qualified to prepare the redevelopment plan, after several of such firms were contacted by this Agency. The redevelopment plan will include an overall proposed site plan showing suggested future uses, building locations, total units, distribution of units, new street layouts, relocation of existing and new utilities. This plan will also show sketch of floor plan, typical elevation of one building.

(f) *Drawings and specifications for utilities, streets and other site improvements to the extent necessary to estimate the cost of such improvements:* It will be prepared by private contract at an estimated cost of $3500. It is the lowest fee obtained from a responsible qualified firm qualified to prepare same, after several of such firms were contacted by this Agency. It will

include drawing and specifications for removing, relocating and installing utilities, widening streets, renovating a public school, etc.

(g) *Appraisals to establish valuations for land in the project area for proposed new uses:* This information is incorporated in the report of the appraiser which is filed herewith and no request is being made in this application for funds for such purpose.

(h) *Determination of re-housing needs of families to be displaced and plans for relocation, etc.:* It will be prepared by the applicant's force under the direction and supervision of a consultant.

It is estimated that a survey of the families residing in the Gregory area will entail the following costs:—

1.—*Field investigation* of the name, address, race, income information, number of persons in each family, etc., of approximately 200 families. This will require the employing of 1 investigator for a period of 3 weeks at a salary of $75 per week or approximately $225.

2.—*Office analysis and verification* will require 1 week for 1 investigator at the cost of $75.

3.—*Clerk-Typist to assist in the preparation of office data, information, etc.*, to be employed for 4 weeks at $55 per week, totaling $220. One-half ($110) chargeable to this project and one-half to St. Johns.

4.—*After relocation plans are prepared,* we contemplate making an addition to the staff for the purpose of handling the relocation schedule.

Exhibit G-2

Summary of Costs (Technical)

1.—Field Investigation	$225
2.—Office Analysis	$ 75
3.—Clerk-Typist	$110
	$410

It is necessary that the services of a consultant be secured to properly direct the survey and prepare plans for the temporary and permanent relocation of displaced families. The cost of such services will be $2500. This is the lowest fee obtained from a responsible firm qualified to perform such services.

(i) *Preparation of plan for financing of the proposed project, including provisions of local grant in aid:* It will be prepared by the applicant's force with the assistance of a consultant. It is estimated that the cost of the consultant's services will be $1000. It is the lowest fee obtained from responsible qualified firms.

Contract with Consultant

It is planned to retain a consultant to work with the staff of the Agency on the overall program and to work with the Jersey City Housing Authority and municipal and private agencies in the determination of the rehousing needs of families to be displaced and preparation of plans for temporary and permanent relocation of families and to consult with the officials of the City of Jersey City and the Agency in the preparation of a plan for the financing of the project, including provisions of local grants-in-aid. It is estimated that the cost of such services will be $5000. This cost is apportioned as follows:—

(1) For directing the survey of families to be displaced, determining rehousing needs and the

preparation of plans for relocating families .. $2500

(2) For preparing a plan for financing the proposed project, including the provisions of local grant-in-aid $1000

(3) Overall assistance, guidance and direction ... $1500

$5000

It is the lowest fee obtained from a responsible firm of consultants after series of conferences.

Summary of Contracts with Private Firms

(1) Topographic and utility survey $2500
(2) Sub-soil survey $1600
(3) Redevelopment plan $7500
(4) Preliminary drawings and outline specifications of each site improvement $3500
(5) Consultant services $5000

$20,100

(j) *Necessary administrative, legal and overhead costs:* It is planned to maintain the same staff (Director, Administrative Assistant, Stenographer) as was approved in the preliminary advance application with the addition of an accountant. It is essential that we retain an accountant to properly maintain financial records and for auditing purposes. It is estimated that the cost of such services will be $300 for a six month period. It is further planned to continue the services of legal counsel to be paid for services to be performed. This will include a review of appropriate laws of the State of New Jersey, preparation of contracts, etc. It is estimated that the cost of such serv-

ices will be $1250 for 6 months. One-half of the above costs will be charged to this project.

This Agency has been working closely with the Jersey City Planning Board, the Jersey City Housing Authority, the Mayor and Commissioners of the City of Jersey City in the development of the program. The proposed program has the unanimous support and endorsement of all the above mentioned agencies and public officials.

EXHIBIT G-3.

HOUSING AND HOME FINANCE AGENCY
Office of the Administrator

Slum Clearance and Urban Redevelopment Program

APPLICATION FOR FINAL ADVANCE

To be filled in by HHFA:
Application No. N. J. 2-2(b)
Locality Jersey City
Date Filed 12-18-50

IDENTIFICATION OF APPLICANT

Applicant Jersey City Redevelopment Agency
(Legal corporate name of Applicant)

Address Jersey City Hudson New Jersey
(City or town) (County) (State)

Applicant's official authorized to supply information relating to this Application:

Exhibit G-3

Bernard F. Kenny	Secretary and Executive Director
(Name)	(Title)
1 Newark Avenue	Delaware 3-3470
(Address)	(Telephone number)

IDENTIFICATION OF PROJECT

Identify the proposed redevelopment project in connection with which the planning and other activities will be performed under this Final Advance:

Name St. John's Site

Location Bounded on North by St. Paul's Ave., South by Newark Ave., East Summit Ave., West by Hudson Boulevard

Area in Acres 17½

ADVANCE REQUESTED

Enter below the estimated costs for plans and other activities to be financed from the Final Advance:

		Estimated Cost 6 months
Work performed directly by Applicant and administrative overhead:		
Salaries—		
Administrative		
Director $2000		
Adm. Asst. .. $1225		$3125
Legal		625
Technical		635
Clerical		700
Accountant		150
		$5,235 *

Exhibit G-3

Expenses—	
Travel	375
Telephone and telegraph	180
Rent and utilities	600
Office supplies, etc.	300
Maps & Blueprints	250
Contingencies	400
Total salaries and expenses	$7,340 *
Contractual services rendered by other government agencies	
Contractual services rendered by private firms	$22 850
Total amount of Final Advance requested	$30,190

* Artificial apportionment of costs—one half for each proposed project—cost for one project would be double above totals.

ESTIMATES

Enter below the Applicant's preliminary estimates of net and gross project cost:

(a) Payments for land and cash value of donated land	$1,279,000
(b) Cost of demolition and clearance of structures	115,000
(c) Cost of installation of site improvements	50,000
(d) Cost of administration, surveys, plans, technical services, overhead, relocation of families, carrying charges, etc.	45,000
(e) Cost of any local grants-in-aid not in-	

cluded above and furnished in forms other than cash	550,000
(f) Total—Gross project cost	$2,039,000
(g) (Deduct) Re-use value of project land.. (See Appraiser's Report)	100,000
(h) Balance—Net project cost	$1,939,000

CERTIFICATE

The Applicant hereinbefore designated makes application to the United States of America for a Final Advance under the provisions of Title I of the Housing Act of 1949 to aid in defraying the costs of plans and other activities in preparation of slum clearance and urban redevelopment projects which may be assisted under said Title I.

The Applicant represents that the data contained in and in support of this Application are true, correct and complete; that the filing of this Application has been duly authorized and approved by the appropriate governing body of the Applicant; that the undersigned officer has been duly authorized by formal action of said governing body to file this Application for and in behalf of said Applicant, to provide to the United States such additional information and documents as may be required, and otherwise to act as the authorized representative of the Applicant in connection with this Application.

IN WITNESS WHEREOF, the Applicant has caused this Application to be duly executed in its name by its undersigned officer and its official seal (if one has been adopted) to be hereunto affixed and attested by its proper official this 11th day of December, 1950, in Jersey City, County of Hudson, State of New Jersey.

Exhibit G-3

ATTEST:

Jersey City Redevelopment Agency
(Legal corporate name of Applicant)
By BERNARD F. KENNY
(Signature of authorized officer)
Bernard F. Kenny

(Here affix seal)

Secretary and Executive Director
(Title of authorized officer)

W. HIRSHBERG
(Signature of attesting officer)
William Hirshberg
Vice-Chairman
(Title of attesting officer)

SPECIAL INSTRUCTIONS: Attach a list of all documents, reports or other exhibits submitted with this Application. Mark each submission with the name of the Applicant.

JERSEY CITY REDEVELOPMENT AGENCY

LIST OF DOCUMENTS & REPORTS SUBMITTED WITH APPLICATION FOR FINAL ADVANCE FOR ST. JOHNS SITE

APPLICATION FOR FINAL ADVANCE

I—Justification of proposed expenditures.
II—General Planning.
III—Proposed Project area and new uses.
IV—Financing.
V—Relocation of Displaced Persons.
VI—Supporting Documents:—

Exhibit G-3

-A-

1.—Arrangements for local grants-in-aid
2.—Form H-604
3.—Certified copies of resolution of Applicant. (original with Gregory application.)
4.—Certified copies of resolution of Governing Body. (original with Gregory application.)

-B-

Survey of St. Johns Site

-C-

Appraisal Report

-D-

Availability of utilities
Maps Filed:
1.—Present zoning.
2.—Existing Land Use.
3.—½ mile radius map.
4.—½ mile radius map showing proposed zoning and land use.
5.—Redevelopment Plan.

JERSEY CITY REDEVELOPMENT AGENCY
ST. JOHNS SITE

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II—GENERAL PLANNING 7
III—PROPOSED PROJECT AREA & NEW USES.... 8
IV—FINANCING 12
V—RELOCATION OF DISPLACED FAMILIES..... 14

Exhibit G-3

JERSEY CITY REDEVELOPMENT AGENCY
ST. JOHN'S SITE

I.—JUSTIFICATION OF PROPOSED EXPENDITURES

The Jersey City Redevelopment Agency plans to proceed with the two following redevelopment projects, known as Gregory Site and St. John's Site, and separate applications are filed herewith. The estimated costs as set forth on form #H-602 is artificially apportioned one-half for each project. The administrative costs and expenses for only one project would be approximately the total of such costs as itemized on both applications. This Agency plans to proceed with the clearance and redevelopment of both sites simultaneously.

The Final Advance will be used to finance the following detailed studies and plans with respect to the St. John's site which are necessary to support an application for a loan and Capital Grant, including the assembly of information required for that application:—

a.—*Procurement of tract ownership data for land acquisition purposes:* Inasmuch as this data is incorporated in the report of the appraiser which is filed herewith, no request is being made in this application for final advance funds for this purpose.

b.—*Appraisals of property to establish valuations for land acquisition purposes:* Inasmuch as this data is incorporated in the report of the appraiser which is filed herewith, no request is being made in this application for funds for this purpose. The appraiser is prepared to testify in court in the event such action is necessary.

c.—*Estimates of cost of demolition or removal of structures:* This estimate will be obtained by the Agency

without charge and therefore no request is being made in this application for final advance funds for this purpose.

d.—*Topographic and other engineering surveys:* A topographic and utility survey will be prepared at an estimated cost of $3750. It will be prepared by private contract. This is the lowest fee obtainable from a responsible firm qualified to prepare the topographic survey, after several of such firms were contacted by this Agency. The topographic survey will include the elevation of the land showing the contour lines of the proposed site in order that we may plan its reuse. The utility survey will include existing utilities such as water, sewerage, gas and electric, etc. A subsoil survey (test borings) is necessary in order to ascertain the approximate bearing capacity of the soil. This project area contains a large deposit of subsurface rock. Test borings are therefore essential for the following reasons:

(1) To locate possible voids and the proper preparation of the redevelopment plans.

(2) To estimate the cost of removing the rock which will be undertaken by the redeveloper so that the resale or use value of the land may be properly ascertained and to induce redevelopers to participate in the program.

This subsurface survey will be prepared by private contract at an estimated cost of $1600. This is the lowest fee obtained from a responsible qualified firm, after several of such firms were contacted.

e.—*Preparation of Redevelopment plan:* It will be prepared by private contract at an estimated cost of $7500. This is the lowest fee obtainable from a re-

sponsible firm qualified to prepare the redevelopment plan, after several of such firms were contacted by this Agency. The redevelopment plan will include an overall proposed site plan showing suggested future uses, building locations, total units, distribution of units, new street layouts, relocation of existing and new utilities. This plan will also show sketch of floor plan, typical elevation of one building.

f.—*Drawings and specifications for utilities, streets and other site improvements to the extent necessary to estimate the cost of such improvements:* It will be prepared by private contract at a cost of $5000. It is the lowest fee obtainable from a responsible firm qualified to prepare same, after several of such firms were contacted by this Agency. It will include drawings and specifications for removing, relocating and installing utilities, renovating a public school, construction of a project center, etc.

g.—*Appraisals to establish valuations for land in the project area for proposed new uses:* This information is incorporated in the report of the appraiser which is filed herewith and no request is being made in this application for funds for such purpose.

h.—*Determination of re-housing needs of families to be displaced and plans for relocation:* It will be prepared by the applicant's force under the direction and supervision of a consultant.

It is estimated that a survey of the families residing in the St. Johns project area will entail the following costs:—

1.—*Field Investigation* of the name, address, race, income information, number of persons in family, etc., of ap-

proximately 360 families. This will require the employing of 1 investigator for 5 weeks at a salary of $75 per week or approximately $375.

2.—*Office analysis and verification* will require 2 weeks for the investigator at the additional cost of $150.

3.—*Clerk-Typist to assist in the preparation of office data, etc.,* to be employed for 4 weeks at $55 per week, totaling $220. One-half ($110) chargeable to this project and one-half to Gregory Project.

4.—*After relocation plans have been prepared,* we contemplate making an addition to our staff for the purpose of handling the relocation schedule.

Summary of Costs (Technical)

1.—Field Investigation	$375
2.—Office Analysis	$150
3.—Clerk-Typist	$110
TOTAL (Technical)	$635

It is necessary that a consultant's services be obtained to direct the survey and prepare the plans for the temporary and permanent relocation of displaced families. The cost of such services will be $2500. This is the lowest fee obtained from responsible firms qualified to perform such services.

i.—*Preparation of plan for financing of the proposed project, including provisions of local grant-in-aid:* It will be prepared by the applicant's force with the assistance of the consultant. It is estimated that the cost of the consultant's services will be $1000. It is the lowest fee obtained from responsible firms qualified to perform such services.

Exhibit G-3

Contract with Consultant

It is planned to retain a consultant to work with the staff of the Agency on the overall program and to work with the Jersey City Housing Authority and municipal and private agencies in the determination of the rehousing needs of families to be displaced and preparation of plans for temporary and permanent relocation of families and to consult with the officials of the City of Jersey City and the Agency in the preparation of a plan for the financing of the project including provisions of local grants-in-aid. It is estimated that the cost of such services will be $5000. This cost is apportioned as follows:—

(1) For directing the survey of families to be displaced, determining rehousing needs and the preparation of temporary and permanent plans for the relocation of families	$2500
(2) Preparation of a plan for financing of the proposed project, including the provisions of local grant-in-aid	$1000
(3) Overall assistance, guidance and direction	$1500
Total	$5000

It is the lowest fee obtainable from responsible firms of consultants after series of conferences.

Summary of Contracts with Private Firms

(1) Topographic and Utility Survey	$3750
(2) Sub-soil Survey	$1600
(3) Redevelopment Plan	$7500
(4) Preliminary drawings and outline specifications of each site improvement (Project center)	$5000
(5) Consultant services	$5000
Total	$22,850

Exhibit G-3

j.—*Necessary administrative, legal and overhead costs:* It is planned to maintain the same staff (Director, Administrative Assistant, Stenographer) as was approved in the preliminary advance application with the addition of an accountant. It is essential that we retain an accountant to maintain adequate financial records and for auditing purposes. It is estimated that the cost of such services will be $300 for a six month period. It is further planned to continue the services of legal counsel to be paid for services to be performed. This will include a review of appropriate laws of the State of New Jersey, preparation of contracts, etc. It is estimated that the cost of such services will be $1250 for a six month period.

This Agency has been working closely and coordinating its activities with the Jersey City Planning Board, the Jersey City Housing Authority, the Mayor and Commissioners of the City of Jersey City in the development of the program. The proposed program has the unanimous support and indorsement of all the above mentioned agencies and public officials.

Exhibit G-3

(Seal)

JERSEY CITY REDEVELOPMENT AGENCY
One Newark Avenue * Jersey City 2, N. J.
DElaware 3-3470

Commissioners

Thomas B. Davidson
Chairman
William Hirshberg
Vice Chairman
Charles Davis
Marcus E. Carpenter
Richard T. McCallum
Frank Coyle

Administrative

Bernard F. Kenny
Executive Director
Max H. Roller
Technical Advisor
Bernard German
Counsel

February 17, 1951

Mr. Nathaniel S. Keith
Housing & Home Finance Agency
Washington, D. C.

Dear Mr. Keith:

Pursuant to the conference with your staff on February 9th last, we are herewith submitting 7 copies of the enclosed material concerning the proposed St. John's Project.

The enclosed materials is as follows:

1—Amended Advance Request.

2—Amended Justification of Proposed Expenditures with attached letter by Clarke & Hartman.

3—Information Requested by Planning Division concerning:

(a) Type of building, number of building, etc. planned.

Exhibit G-3

(b) Information concerning income of veterans and the need for housing in Jersey City, with supporting letters attached.

(c) Information concerning schools and playgrounds, with supporting letters attached.

4—Explanation of the Estimates on the Reverse Form H-602.

Lot

5—Two copies of Block & Block Map.

It is requested that the application for final advance that we have filed be amended to include the enclosed material and the advance requested be revised by reducing the contractual services by private firms to $19,850.00.

Very truly yours,

BERNARD F. KENNY

Bernard F. Kenny

Executive Director

BFK:ft

JERSEY CITY REDEVELOPMENT AGENCY

ST. JOHN'S SITE

ADVANCE REQUESTED AS AMENDED

Enter below the estimated costs for plans and other activities to be financed from the Final Advance:

	Estimated Cost 6 months
Work performed directly by Applicant and administrative overhead:	
Director	$2000.00
Adv. Asst.	1225.00

Exhibit G-3

Salaries—	
Administrative	$3125.00
Legal	625.00
Technical	635.00
Clerical	700.00
Accountant	150.00
	$5,235.00
Expenses—	
Travel	375.00
Telephone and telegraph	180.00
Rent and utilities	600.00
Office supplies, etc.	300.00
Maps and blueprints	250.00
Contingencies	400.00
Total salaries and expenses	$7,340.00
Contractual services rendered by other government agencies	
Contractual services rendered by private firms	19,850.00
Total amount of Final Advance requested	$27,190.00

* Artificial apportionment of costs—one half for each proposed project—cost for one project would be double above totals.

Exhibit G-3

JERSEY CITY REDEVELOPMENT AGENCY

ST. JOHN'S SITE

I—*Amended justification of proposed expenditures.*

The following information and data has been requested in support of the application for a final advance in respect to the following items.

c. ESTIMATES OF COST OF DEMOLITION, ETC.

The estimate as submitted in this application namely $115,000.00 is the lowest figure obtained by competitive bidding from three responsible, qualified firms. We are not presently requesting these monies.

d. TOPOGRAPHIC AND OTHER ENGINEERING SURVEYS:—

The estimate of $3750.00 as filed is to be reduced to the sum of $3500.00. As a result of conferences, we effected this reduction. You will find attached a statement by Clarke & Hartman, Professional Engineers in support of said estimate. This is the lowest bid obtained. The other estimates we received for this survey is $4000.00.

e.—PREPARATION OF REDEVELOPMENT PLAN.

The redevelopment plan will include an overall proposed site plan showing suggested future uses, building locations, total units, distribution of units, new street layouts, relocation of utilities, sketch of floor plan, and typical elevation of one building.

The following is an outline of the cost of preparing a redevelopment plan. It will involve:—

1—On site investigation.

Exhibit G-3

2—Study of topographical and utility survey.

3—Study of sub-soil conditions.

4—Total study of a workable site plan.

5—Typical floor plan studies including room size, room count and cubage data to estimate overall costs.

6—Elevation studies to be further worked into a rendered perspective stage. The results of this stage to be utilized for the inducement of municipal support and to secure public acceptance of the program.

The above mentioned studies are the real time consuming and expense consuming factors in the preparation of the redevelopment plan. The studies that result in the design are performed by the higher paid professional men with salaries ranging from $125.00 to $150.00 per week.

The site plan studies are performed by a site planner and a landscape architect, combined with a consulting engineer on site utilities. For an area the size of St. John's the cost to the architect is approximately $2000.00.

The floor plan studies are the utmost importance because the architect continually strives towards not only the most workable plan but the most economical. The floor plan actually determines project cost and the study of it usually requires several top designers in the $150.00 per week bracket. The study and design cost of the floor plan is estimated at $1500.00.

The elevation studies and the rendering of the project for public interest is a designer's as well as a delineator's task. The designer determines the design and the delineator portrays it in a rendered perspective which is usually the most appreciated portion of all the work. For design and delineation of a project the size of St. John's, the estimate is $1500.00.

Exhibit G-3

DESIGN AND STUDY COST

Site plan—engineering and architectural	$2000.00
Typical floor plan with tabulation data	1500.00
Elevation and delineations	1500.00
Total Study Cost	$5000.00

The estimated time for three architectural and one mechanical draftsmen is as follows:

Site plan—engineering and architectural, 80 hours @ $3.00 per hr.	$ 240.00
Typical floor plan—tabulation data, 100 hours @ $3.00 per hr.	300.00
Elevations and delineations, 40 hours @ $3.00 per hr.	120.00
Total Drafting Cost	660.00
Total Study Cost	5,000.00
Total Redevelopment Plan Cost	$5,660.00

Allowing one-third of the above cost for overhead, contingencies and profit which amounts to $1867.80, we arrive at a total figure of $7527.80. The sum of $7500.00 is therefore requested for the preparation of the redevelopment plan.

f.—DRAWING AND SPECIFICATIONS FOR UTILITIES, STREETS AND OTHER SITE IMPROVEMENTS, ETC.

The Housing and Home Finance Agency advises that these costs must be incurred by the City of Jersey City as the cost of utilities, project center, and renovation of the school are part of the local-grant-in-aid and these drawing and specifications are in connection with the

local-grant-in-aid. It is therefore requested that this cost ($5000.00) be deleted from the application.

The cost of the site improvements is an estimate by the City of Jersey City.

g.—APPRAISALS TO ESTABLISH VALUATIONS FOR LAND IN PROJECT AREA FOR PROPOSED NEW USES.

A detailed study of the marketability of the land within the project area and a market analysis of the reuse value of the land is requested. This will be performed when the redevelopment plan is developed and approved. We plan to retain two qualified appraisers to perform the above mentioned services. It is estimated that the cost of each appraiser will be $625.00 or $1250.00 for both. This estimate was determined after conferences with responsible qualified firms.

PRINTING OF BROCHURE

It is requested that the sum of $1000.00 be added to the Advance Requested—contractual services rendered by private firms—for the printing of a brochure incorporating the material and data necessary for proper presentation to the governing body of the City of Jersey City, and for public acceptance of the program.

SUMMARY OF CONTRACTS WITH PRIVATE FIRMS

(1) Topographic and utility survey	$3500.00
(2) Sub Soil survey	1600.00
(3) Redevelopment plan	7500.00
(4) Appraisal-reuse value, market analysis	1250.00
(5) Consultant services	5000.00
(6) Printing of Brochure	1000.00
Total	$19,850.00

Exhibit G-6

We of course are aware that all contracts must be submitted to the Housing & Home Finance Agency for approval prior to the same being executed.

EXHIBIT G-6.

(Seal)

JERSEY CITY REDEVELOPMENT AGENCY
One Newark Avenue * Jersey City 2, N. J.
DElaware 3-3470

Commissioners	Administrative
Thomas B. Davidson, Chairman	Bernard F. Kenny, Executive Director
William Hirshberg, Vice Chairman	Max H. Roller, Technical Advisor
Charles Davis	Bernard German, Counsel
Marcus E. Carpenter	
Richard T. McCallum	
Frank Coyle	

May 29, 1951

Mr. Nathaniel S. Keith,
Housing & Home Finance Agency,
1625 K Street,
Washington 25, D. C.

UR-NJ A-8
UR-NJ A-9

Dear Mr. Keith:

You will find enclosed, two copies of proposed contracts with private firms concerning the following services:—

Exhibit G-6

Mascolo & Masumian

1—Redevelopment Plan—UR-NJ A-8

2—Redevelopment Plan—UR-NJ A-9

Housing, Redevelopment & Planning Associates

1—Consultant—Planning & Supervision for both UR-NJ A-8 and UR-NJ A-9

2—Consultant—Relocation for both UR-NJ A-8 and UR-NJ A-9

We would appreciate your advising us as soon as convenient regarding the enclosed contracts.

Yours very truly,

BERNARD F. KENNY
Bernard F. Kenny
Executive Director

BFK:ft
Enc.

Exhibit G-7

EXHIBIT G-7.

(Seal)

JERSEY CITY REDEVELOPMENT AGENCY
One Newark Avenue * Jersey City 2, N. J.
DElaware 3-3470

Commissioners	Administrative
—	—
Thomas B. Davidson Chairman	Bernard F. Kenny Executive Director
William Hirshberg Vice Chairman	Max H. Roller Technical Advisor
Charles Davis	Bernard German Counsel
Marcus E. Carpenter	
Richard T. McCallum	
Frank Coyle	

July 9, 1951

Mr. Nathaniel S. Keith,
Housing & Home Finance Agency,
Division of Slum Clearance &
Urban Redevelopment,
Washington 25, D. C.

Re: UR-NJ A-8 A-9
Final Advance

Dear Mr. Keith:

Pursuant to your request, you will find enclosed copies of the following contracts that have been executed by this Agency.

A-8	Mascolo & Masumian, Clarke & Hartman,	Redevelopment Plan Topo & Utility

Exhibit G-13

A-9	Mascolo & Masumian, Clarke & Hartman,	Redevelopment Plan Topo & Utility
A-8 A-9	Housing, Planning & Redevelopment Associates,	Consultants
A-8 A-9	Housing, Planning & Redevelopment Associates,	Relocation

I trust that you, as Administrator, will approve the prevailing wage scales where said schedules are attached to the aforesaid contracts.

Very truly yours,

BERNARD F. KENNY

B. F. Kenny

BFK/ft
Enc.

EXHIBIT G-13.

April 2, 1951

Mr. Bernard F. Kenny
Executive Director
Jersey City Redevelopment Agency
1 Newark Avenue
Jersey City, New Jersey

Re: Final Advance Application No. UR N.J. 2-2(b)
(St. Johns Site)

Dear Mr. Kenny:

I am enclosing a letter of notification from the Administrator that he has made an allocation in the amount of

$25,000 as a Final Advance to the Jersey City Redevelopment Agency. This amount is based on the approval of the cost estimates in your Application to the extent indicated in the attached Latest Approved Estimate. Costs that may be incurred and expenditures that may be made under the Contract for Advance will be controlled through Certificates of Purposes and in accordance with the Latest Approved Estimate. Revisions in the Latest Approved Estimate may be effected solely upon written request to the Division of Slum Clearance and Urban Redevelopment and the transmission to you of a Latest Approved Estimate. The attached Statement of Differences is for your information and indicates our review of your cost estimates in the development of the Latest Approved Estimate.

Contract forms and other legal documents relating to this Advance will be forwarded to you. It should be noted that advances of funds under the Final Advance Contract will be controlled through the amounts shown in "Certificates of Purposes". When you submit your Requisition for Funds and the accompanying Certificates of Purposes in conformity with the contract we will then make appropriate determinations respecting your proposed expenditures.

Pending such determinations, no part of the Advance should be expended or obligated. "Certificates of Purposes" and accompanying Requisitions must be supported by a definite program of the work to be done in the period covered by the Certificate. Space rental, equipment and other overhead must be related to the personnel required to perform this work.

Funds advanced under the Contract for Advance are for the purpose of undertaking a survey of a slum and blighted project area generally described as follows:

St. Johns Site—Starting at the intersection of Summit Avenue and Newark Avenue; thence continuing

westerly on Newark Avenue to Hudson County Boulevard; thence northeasterly on Hudson County Boulevard to St. Paul's Avenue; thence easterly on St. Paul's Avenue to Summit Avenue; thence southerly on Summit Avenue to the place of beginning.

Funds advanced under the contract are also for the purpose of making further studies and analyses to support an Application for Loan and Grant Contract. It is further understood that activities to be undertaken under the Contract for Advance will cover a period of approximately six (6) months, and that an Application for Loan and Grant Contract will be submitted during that period.

You are hereby advised that:

1. None of the Advance of Funds shall be obligated for a private or public contract for professional services until the proposed contract has been submitted to and approved by the Director of the Division of Slum Clearance and Urban Redevelopment. The submissions of proposed contracts shall be accompanied by a statement indicating the scope of the work to be performed and the method by which the fee proposed to be paid was determined. If private firms performing contractual services employ architects, technical engineers, draftsmen or technicians, it will be necessary for the Jersey City Redevelopment Agency to submit the names of the positions, salaries proposed to be paid positions and a brief description of the duties of each.

2. None of the funds allocated under this Advance are to be disbursed unless data are furnished prior to or with the first Certificate of Purposes, supporting the estimated cost of installation of site improvements in the amount of $50,000.

Exhibit G-14

We look forward with pleasure to participating with you in the development of a slum clearance and urban redevelopment program in the City of Jersey City.

Sincerely yours,

N. S. KEITH
Director

Attachments	Keith	
DSCUR	Evans	
HORAN:mes 3-15-51	Farris	King
cc: DSCUR CF	Feiss	McCormack
	Guandolo	Meade
	Horan	Thomas

EXHIBIT G-14.

April 12, 1951

Mr. Bernard F. Kenny
Executive Director
Jersey City Redevelopment Agency
1 Newark Avenue
Jersey City, New Jersey

Re: Final Advance Application No. UR N. J. 2-1(b)
(Gregory Site)

Dear Mr. Kenny:

I am enclosing a letter of notification from the Administrator that he has made an allocation in the amount of $22,300.00 as a Final Advance to the Jersey City Redevelopment Agency. This amount is based on the approval of the cost estimates in your Application to the extent indicated in the attached Latest Approved Estimate. Costs that may be

incurred and expenditures that may be made under the Contract for Advance will be controlled through Certificates of Purposes and in accordance with the Latest Approved Estimate. Revisions in the Latest Approved Estimate may be effected solely upon written request to the Division of Slum Clearance and Urban Redevelopment and the transmission to you of a Latest Approved Estimate. The attached Statement of Differences is for your information and indicates our review of your cost estimates in the development of the Latest Approved Estimate.

Contract forms and other legal documents relating to this Advance will be forwarded to you. It should be noted that advances of funds under the Final Advance Contract will be controlled through the amounts shown in "Certificates of Purposes". When you submit your Requisition for Funds and the accompanying Certificates of Purposes in conformity with the contract we will then make appropriate determinations respecting your proposed expenditures.

Pending such determinations, no part of the Advance should be expended or obligated. "Certificates of Purposes" and accompanying Requisitions must be supported by a definite program of the work to be done in the period covered by the Certificate. Space rental, equipment and other overhead must be related to the personnel required to perform this work.

Funds advanced under the Contract for Advance are for the purpose of undertaking a survey of a deteriorated or deteriorating area that is to be developed for residential purposes and is generally described as follows:

> *Gregory Site*—Starting at the intersection of York and Henderson Streets; thence continuing northerly on Henderson Street to Railroad Avenue; thence south-

easterly on Railroad Avenue to Warren Street; thence southerly on Warren Street to York Street; thence westerly on York Street to the place of beginning.

Funds advanced under the contract are also for the purpose of making further studies and analyses to support an Application for Loan and Grant Contract. It is further understood that activities to be undertaken under the Contract for Advance will cover a period of approximately six (6) months, and that an Application for Loan and Grant Contract will be submitted during that period.

You are hereby advised that:

1. The Contract for a Final Advance will provide that no funds will be made available under the provisions of the contract until you have submitted satisfactory proof of compliance with the budget provision of your State Enabling Act (Redevelopment Agencies Law N. J. S. A. 40:55 C-11). Such budget shall be sufficiently comprehensive to cover all proposed expenditures of advance funds including such expenditures as may be made following the close of the year for which the budget is submitted. Separate resolutions should be adopted for the Gregory Site and the St. John's Site. Each such resolution should refer to the specific project area involved as indicated in the attached draft of a proposed budget resolution.

2. None of the Advance of Funds shall be obligated for a private or public contract for professional services until the proposed contract has been submitted to and approved by the Director of the Division of Slum Clearance and Urban Redevelopment. The submissions of proposed contracts shall be accompanied by a statement

indicating the scope of the work to be performed and the method by which the fee proposed to be paid was determined. If private firms performing contractual services employ architects, technical engineers, draftsmen or technicians, it will be necessary for the Jersey City Redevelopment Agency to submit the names of the positions, salaries proposed to be paid positions and a brief description of the duties of each.

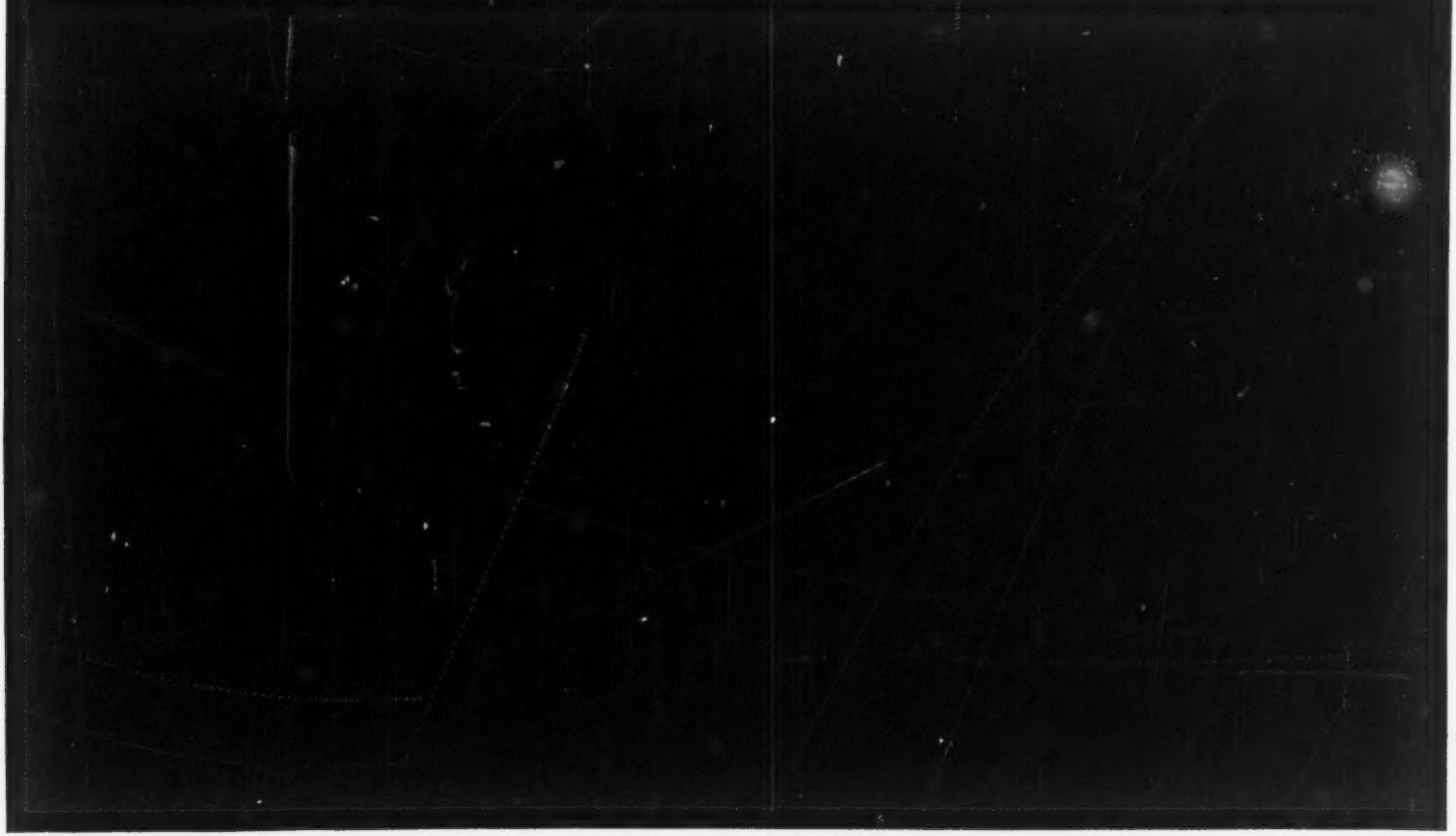
We look forward with pleasure to participating with you in the development of a slum clearance and urban redevelopment program in the City of Jersey City.

Sincerely yours,
N. S. KEITH
Director

cc: DSCUR (2)
CF
Foley
Keith
Evans
Farris
Feiss
Guandolo
McCormack
Meade
Thomas
Horan
King
Plant

Attachments

DSCUR:HORAN:mm 3/31/51 X3078



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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 394

BERNARD F. KENNY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 9-15) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered July 10, 1956 (Pet. App. 16). On August 4, 1956, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to September 8, 1956, and the petition was filed on September 7, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

At a joint trial of two indictments, one charging petitioner and others with willful misrepresentation of petitioner's interest in a private firm having government contracts while he was in the employ of a state housing agency, and the other charging petitioner alone with having willfully concealed his interest, the jury acquitted all the defendants on the charge of willful misrepresentation and disagreed as to the indictment against petitioner alone. The question presented is whether the verdict of acquittal on the misrepresentation indictment barred petitioner's retrial on the concealment indictment.

STATUTE INVOLVED

18 U. S. C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was executive director of the Jersey City Redevelopment Agency from March 15, 1950, until sometime in 1954. This agency performed local slum clearance and urban redevelopment through funds provided by the Housing and Home Finance Agency, a federal agency (R. 2, 344). The contracts between

the federal and state agency prohibited any employee of the state agency from having any interest in any contract for services to be procured by the state agency in carrying out its work (R. 18).

On June 23, 1954, two indictments were returned against petitioner. Indictment No. 273-54 (hereinafter referred to as the second indictment) charged petitioner, as the sole defendant, with willfully concealing the fact that, while serving as director of the state agency, he had a private interest in two contracts of service dated July 2, 1952, entered into by the state agency with the architectural firm of Mascolo & Masumian; the private interest was alleged to be his undisclosed partnership interest in the firm (R. 2-4). A companion indictment, No. 274-54, (hereinafter referred to as the first indictment), containing four counts, charged that petitioner, Mascolo, Masumian and Comparetto, as partners in the architectural firm of Mascolo & Masumian, knowingly and willfully made false statements in affidavits contained in four vouchers submitted to the state agency, between October 5, 1951, and January 15, 1952, for payment under the aforementioned contracts. In each of these affidavits, one of the partners stated in behalf of the firm that no employee of the state agency had any interest in the contractual claims,[1] whereas, the indictment avers, the defendants knew that petitioner was an employee in the local agency and had an interest in the claims (R. 344-350).

Both indictments were tried together. At the conclusion of the trial, the jury was instructed that the basic issues raised by the evidence were whether peti-

[1] Two of these affidavits were signed by Mascolo (October 5, 1951; January 15, 1952). Two were signed by Masumian (December 12, 1951). None was signed by petitioner.

tioner was a partner in the firm of Mascolo & Masumian from October 1951 to January 15, 1952, and if so (a) whether petitioner willfully concealed his partnership status, as distinguished from negligent concealment (second indictment), and (b) whether misstatements in the vouchers were willful as distinguished from negligent (first indictment) (R. 357-358). The jury acquitted the defendants of the charge in the first indictment,[2] and disagreed as to petitioner's guilt under the second indictment (see the transcript of the first trial, p. 266).

Before retrial of the second indictment, petitioner's motion to dismiss on the grounds of double jeopardy and collateral estoppel was denied (R. 5). Upon retrial of petitioner, the jury returned a verdict of guilty (R. 230). Petitioner was sentenced to two years imprisonment and fined $5,000. On appeal, the judgment was unanimously affirmed (Pet. 16), the court holding that retrial on the individual indictment was not barred by principles of collateral estoppel.

ARGUMENT

Petitioner renews in this Court the contention that his acquittal on the first indictment barred his retrial on the second. In holding that it did not, the court below was correctly applying to the facts of this case the principles laid down in *Sealfon* v. *United States*, 332 U. S. 575. Under these principles of collateral es-

---

[2] The indictment against defendant Comparetto was dismissed by the court after the government's case, on the ground that the evidence did not show "any knowledge and complicity" on his part in the submission of the conflict-of-interest affidavits. (Transcript of first trial, p. 211).

toppel,[3] the only question, as petitioner himself states (Pet. 5), is whether the verdict of acquittal on the first indictment necessarily determined the facts crucial to petitioner's conviction on the second. It is not enough to show that the facts at issue in the second trial might have been embraced in the first charge; even though "* * * the matter was properly within the issue controverted in the former suit, if it be not shown that the verdict and judgment necessarily involved its consideration and determination, it will not be concluded." *Packet Co.* v. *Sickles,* 5 Wall. 580, 592. Cf. *United States* v. *Kaadt,* 171 F. 2d 600, 605 (C. A. 7); *United States* v. *Halbrook,* 36 F. Supp. 345, 349 (E. D. Mo.).

1. In the second trial, the crucial issue was whether petitioner willfully concealed the fact that, while he was executive director of the state agency, he had an interest in a firm with which the agency had contracts. That issue was not necessarily determined at the first trial. There, the judge had instructed, as to the first (the joint) indictment, that the salient questions were (1) whether petitioner was a member of the firm of Mascolo & Masumian during the period alleged in the indictment, and (2) whether the misstatements contained in the affidavits were willful (R. 357). The

[3] Since the indictments were initially tried together, there may be some question as to the application of the doctrine of collateral estoppel to this case. Inconsistency in the verdict by acquittal on the first indictment and conviction on the second would not have been grounds for reversal of the conviction. *United States* v. *Antonelli Fireworks Co.,* 155 F. 2d 631 (C.A. 2), certiorari denied, 329 U.S. 742. If the retrial is regarded as a continuation of the original incompleted trial, the same ruling should apply. We believe it unnecessary to reach this question since, assuming the applicability of the principle of collateral estoppel, we submit, for the reasons set forth in the text, that retrial was not barred in this case.

reasonable interpretation of the verdict of acquittal on that charge, in the light of the disagreement on the second, is that the jury found that the false statements in the affidavits were not willfully made by the partner signing the affidavit. If petitioner were found not to have been a partner, he should also have been acquitted under the second indictment in accordance with the trial judge's instructions that a finding of no partnership means that "Nobody is guilty" (R. 357). The most plausible explanation of the jury's action, taken as a whole, is that, while it found petitioner to be a partner, it also found that the representations in the affidavits were not willfully made by the signing partners, and it disagreed as to petitioner's personal intent in concealing the fact of his partnership.

We recognize, of course, that consistency in a verdict is not required, but neither is it necessary for a court to presume inconsistency. Petitioner's argument that the first jury determined that he was not a partner assumes that that jury disregarded the judge's instruction to acquit on both counts if that was their finding, and such a verdict would be so inconsistent as to be unreasonable. In these circumstances, it cannot be said that the acquittal on the joint indictment necessarily determined the issue of whether petitioner was a partner in the business.

2. Petitioner further contends that, even if the only issue decided by the verdict of acquittal was lack of the requisite criminal intent, *res judicata* or collateral estoppel is still an available defense against retrial on the individual indictment since the criminal intent required to be established under both indictments was identical (Pet. 7-8). This assertion is without sub-

stance. There is a manifest difference between the intent with which another partner signed an affirmative representation in an affidavit, and petitioner's personal intent, while an officer of the state agency, in concealing his conflicting interest in a partnership with which the agency was doing business. Consequently, a finding that the misrepresentation charged in the first indictment was not willful would not conclude, in petitioner's favor, the issue of personal willful concealment charged in the second.[4]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

OCTOBER 1956.

---

[4] Petitioner also urges double jeopardy as a defense, but this contention likewise has no merit. The offenses charged were distinct and separate, although arising from the same general transaction. "It is only an identity of offenses which is fatal". *Pinkerton* v. *United States*, 328 U.S. 640, 644; see also, *United States* v. *Williams*, 341 U.S. 58, 62; *Carter* v. *McClaughry*, 183 U.S. 365, 394-395.

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JOHN T. FEY, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 394

BERNARD F. KENNY,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

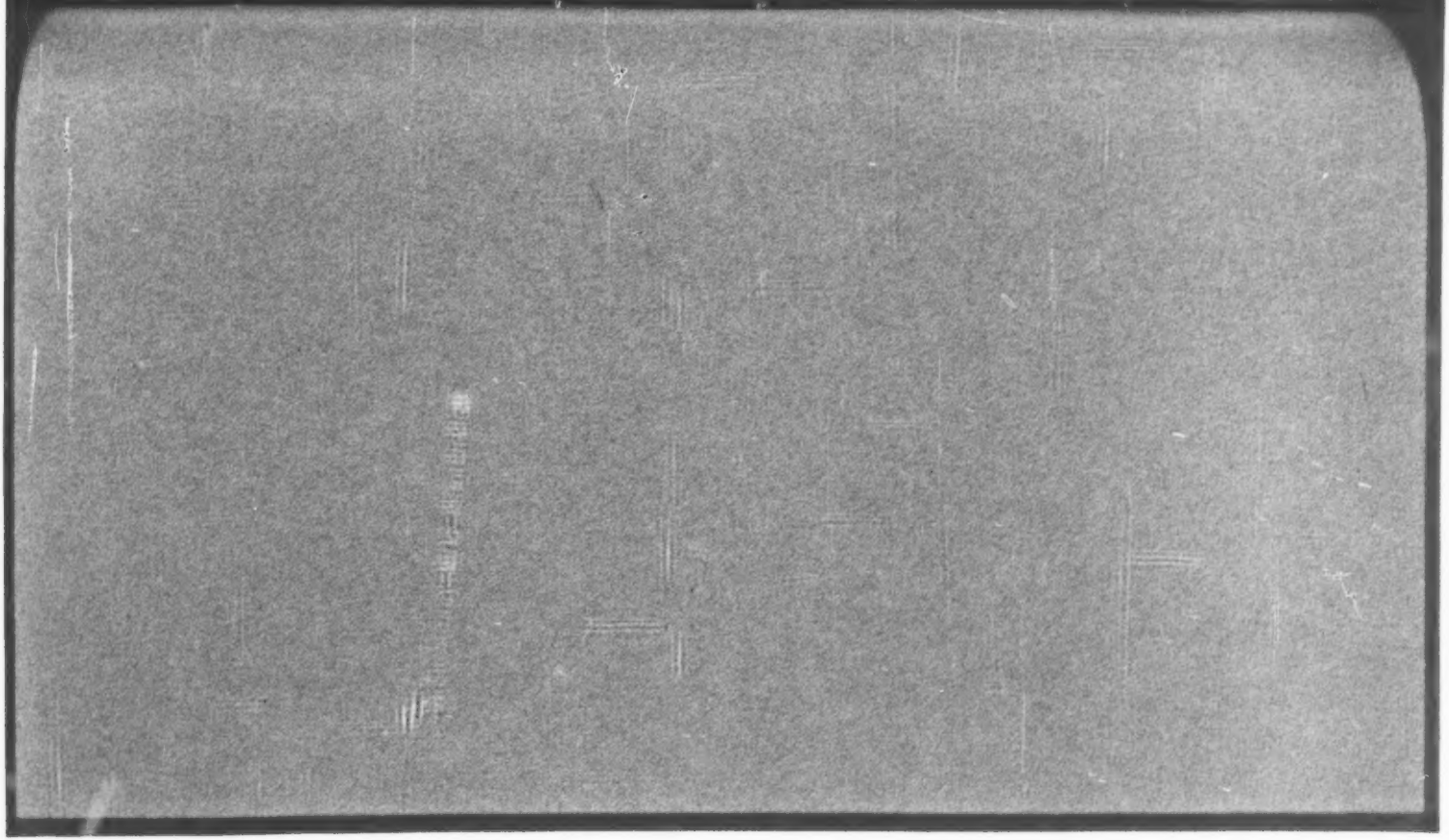
REPLY BRIEF FOR PETITIONER

ISADORE GLAUBERMAN,
Counsel for Petitioner,
921 Bergen Avenue,
Jersey City, New Jersey.

MARTIN D. MODONEY,
Attorney for Petitioner,
1180 Raymond Boulevard,
Newark 2, New Jersey.

WARREN BRODY,
On the Brief.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12



Reply Brief

This reply brief is submitted to underscore an obvious and fatal defect in the structure of the argument contained in the Government's brief.

The Government contends that there is a "manifest difference" in the criminal intent requisite under the first indictment and the intent requisite under the second (Resp. 7). The difference is "manifest", the Government claims, because under the first indictment petitioner's conviction rested on the intent of "another partner" whereas under the second indictment petitioner's "personal intent" had to be determined.

A review of the first indictment and of the statement of the Question Presented as it is cast in the Government's brief (Resp. 2) plainly indicates that under the first indictment as under the second, the petitioner's intent is the only person's intent relevant to his conviction.

The following is a running excerpt of the charge in Count I of the first indictment as it applies to the petitioner:

> ". . . BERNARD F. KENNY . . . did . . . knowingly, willfully and unlawfully make a false material statement and representation in an affidavit wherein . . . ANTHONY J. MASOLO . . . swore under oath, that no employee of the said local agency now or during the past year has or will have any interest direct or indirect in said claim, which statement and representation the said BERNARD F. KENNY . . . then and there well knew was false . . . "

There has never been any question in this case but that petitioner's alleged guilt under the first indictment is independent of the guilt or innocence of any of his co-defendants. The above quoted portions of the indictment are clear in this respect and as noted in the petition (Pet. 6)

the Court characterized petitioner's alleged crime under the first indictment as one of "knowledge and acquiescence."

While the Court below guessed that the jury had decided that the petitioner lacked the "requisite criminal intent" under the first indictment (Pet. 7), the Government now seems to suggest that that jury had never considered petitioner's intent at all when they acquitted him under the first indictment.

We respectfully submit that both the Court below and the Government have strained to avoid the only sound view of this case. The Government in its very statement of Question Presented states that the first indictment charged the petitioner with "wilful misrepresentation of [his] interest" while the second charged him with "having wilfully concealed his interest". Surely under the Government's own statement of the case it is obvious that the issue of concealment or misrepresentation and the issue of wilfulness are identical in both. Having once been acquitted, the petitioner should not have been tried again.

Respectfully submitted,

ISADORE GLAUBERMAN,
Counsel for Petitioner.
MARTIN D. MORONEY,
Attorney for Petitioner.

WARREN BRODY,
On the Brief.